

TABLE OF CONTENTS

I. REAL PARTY IN INTEREST	1
II. RELATED APPEALS AND INTERFERENCES	1
III. STATUS OF CLAIMS	2
IV. STATUS OF AMENDMENTS	2
V. SUMMARY OF CLAIMED SUBJECT MATTER	2
VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL	3
VII. ARGUMENT	4
VIII. CLAIMS APPENDIX.....	12
IX. EVIDENCE APPENDIX.....	16
X. RELATED PROCEEDINGS APPENDIX.....	17

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
Kwasi ASARE, et al.	:	Confirmation Number: 2577
	:	
Application No.: 10/726,192	:	Group Art Unit: 2192
	:	
Filed: December 2, 2003	:	Examiner: T. Dao
	:	
For: HOSTING ENVIRONMENT ABSTRACTION AGENTS	:	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed December 12, 2007, and in response to the Examiner reopening prosecution in the Office Action dated March 17, 2008, wherein Appellants appeal from the Examiner's rejection of claims 1-2, 4-7, 11-12, and 14-17.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on May 6, 2004, at Reel 014606, Frame 0715.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-2, 4-7, 11-12, and 14-17 are pending and four-times rejected in this Application. Claims 3, 8-10, and 13 have been cancelled. It is from the multiple rejections of claims 1-2, 4-7, 11-12, and 14-17 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Fourth Office Action dated March 17, 2008 (hereinafter the Fourth Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 3 and to independent claim 1, a hosting environment abstraction method is disclosed. In block 310, each of a set of components in an application are enumerated (lines 6-7 of paragraph [0025] of Appellants' disclosure). In block 320, dependencies between each component in the set are identified (lines 7-8 of paragraph [0025]). In block 330, a generic representation of the set of components are organized into a hierarchical structure based upon the identified dependencies (lines 1-3 of paragraph [0026]). In block 340, a model encapsulating the hierarchical structure is produced, and the model is stored in a repository for subsequent retrieval (lines 3-4 of paragraph [0026]). The identifying step comprises the step of inspecting each component in the set for data and method member references to other ones of the components in the set with the references indicating a dependency (lines 8-10 of paragraph [0025]). Also, the components are application components, and the application comprises the set of components (lines 1-4 of paragraph [0023]).

Referring to Figure 3 and to independent claim 11, a hosting environment abstraction method is disclosed. In block 310, each of a set of components in an application are enumerated

1 (lines 6-7 of paragraph [0025] of Appellants' disclosure). In block 320, dependencies between
2 each component in the set are identified (lines 7-8 of paragraph [0025]). In block 330, a generic
3 representation of the set of components are organized into a hierarchical structure based upon the
4 identified dependencies (lines 1-3 of paragraph [0026]). In block 340, a model encapsulating the
5 hierarchical structure is produced, and the model is stored in a repository for subsequent retrieval
6 (lines 3-4 of paragraph [0026]). The identifying step comprises the step of inspecting each
7 component in the set for data and method member references to other ones of the components in
8 the set with the references indicating a dependency (lines 8-10 of paragraph [0025]). Also, the
9 components are application components, and the application comprises the set of components
10 (lines 1-4 of paragraph [0023]).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-2, 4-7, 11-12, and 14-17 were rejected under 35 U.S.C. § 102 for anticipation based upon Grier et al., U.S. Patent No. 6,871,344 (hereinafter Grier).

VII. ARGUMENT

THE REJECTION OF CLAIMS 1-2, 4-7, 11-12, AND 14-17 UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON GRIER

For convenience of the Honorable Board in addressing the rejections, claim 11 stands or falls together with independent claim 1; claim 12 stands or falls together with claim 2; claim 14 stands or falls together with claim 4; claim 15 stands or falls together with claim 5; claim 16 stands or falls together with claim 6; and claim 17 stands or falls together with claim 7.

As is evident from Appellants' comments below, there are questions as to how the limitations in the claims correspond to features in the applied prior art. In this regard, reference is made to M.P.E.P. § 1207.02, entitled "Contents of Examiner's Answer." Specifically, the following is stated:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(9)(e) For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate. (emphasis added)

Therefore, if the Examiner is to maintain the present rejections and intends to file an Examiner's Answer, the Examiner is required to include the aforementioned section in the Examiner's Answer.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single

reference.¹ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.² As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.³ This burden has not been met.

Claim 1

Claim 1, in part, recites "enumerating each of a set of components in an application" and "identifying dependencies between each component in said set." The Examiner addressed these limitations in the last portion on page 3 and the first portion on page 4 of the Fourth Office Action. In particular, the Examiner's first assertion was to cite column 11, lines 14-30 of Grier and to state "assemblies as a set of components in an application."

In column 2, lines 33-36, Grier states that "[a] component is often packaged with other components as an assembly, wherein an assembly is set of one or more component files that are versioned and ship as a unit, and thus as used herein a set of one or more components are also referred to as an assembly" (emphasis added). Thus, based upon the unambiguous teachings of Grier, an assembly (i.e., one assembly) is the set of components. Although the Examiner's

¹ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

² See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

³ Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

analysis is not clear, the Examiner appears to be asserting that the assemblies (i.e., a plurality of assemblies) are the components. If so, Appellants respectfully disagree with the Examiner's analysis for the reasons set forth above.

Regarding the "identifying dependencies between each component in said set," the Examiner cited column 19, lines 22-50 and column 20, line 48 through column 21, line 31. Upon reviewing the Examiner's first cited passage in column 19, Appellants are not clear as to the relevance of this passage as to the limitations at issue. The Examiner's cited passage refers to the system illustrated in Fig. 5 of Grier, which also illustrates the steps involved in loading a particular version of a requested assembly version.

The Examiner's second cited passage refers to Fig. 7, which along with Fig. 6, describe the steps involved with initializing an activation context based upon manifests and configurations. This passage is refers to Fig. 8, which is described as a dependency graph. Fig. 8 and the Examiner's cited passage, however, do not refer to dependencies between each of a set of components in an application (i.e., dependencies between the components). Instead, the Examiner's cited passage describes dependencies between assemblies. Thus, Grier fails to identically disclose the claimed "identifying dependencies between each component in said set" within the meaning of 35 U.S.C. § 102.

Claim 1, in part, further recites "producing a model encapsulating said hierarchical structure; and, storing said model in a repository for subsequent retrieval." To teach these

limitations, the Examiner cited the following "FIG. 2A-B, Manifests 214 and 215, col.11: 14 — col.12: 57; FIG. 3A-B, Application Manifest 204, col.16: 4-39." Previously, the Examiner identified Fig. 8 (i.e., the "dependency graph 800") as corresponding to the claimed hierarchical structure. However, none of the passages cited by the Examiner as to the above-identified limitations refer to the dependency graph 800. Although column 7, lines 26-28 refers to dependencies with regard to the manifest 204, this manifest is neither a "hierarchical structure," as claimed, nor the dependency graph 800, which was previously asserted by the Examiner as corresponding to the claimed hierarchical structure. Manifests 214, 215 are manifests associated with a particular assembly (see column 11, lines 16-30) and do not appear to be any different than manifest 204. Thus, the Examiner's cited passages further fails to establish that Grier identically discloses the limitations at issue in claim 1 within the meaning of 35 U.S.C. § 102.

Claim 1, in part, further recites "said identifying step comprises the step of inspecting each component in said set for data and method member references to other ones of said components in said set, said references indicating a dependency." To teach these limitations, the Examiner asserted the following on page 4 of the Fourth Office Action:

said identifying step comprises the step of inspecting each component in said set for data and method member references (e.g.,

FIG. 4, the step of inspecting must have been performed to "detect whether a saved activation context 302 is valid", col.18: 37-42, "map the application's requests to the proper assembly versions" col.18: 45-46; "fields", "DLL name", "pathname" following the configuration-resolution process, col.18: 48-58;

FIG. 5, Runtime Version-Matching Mechanism 500 inspects/verifies each assembly using API and Version Independent Name, col.21: 46 - col.22: 29;

FIG. 7, steps 704/710/712, identifying and/or inspecting/evaluating dependencies using pointers, fields, publisher policy, and application policy, col.20: 48-65, col.21: 1-31)

to other ones of said components in said set (e.g., col.11: 14-30; col.18: 4562; FIG. 8, col.20: 48 — col.21: 10,

1 *said references indicating a dependency (e.g., col.21: 11-31; FIG. 11- Handle any new*
2 *Dependencies 1114, col.22: 44 — col.23: 13).*

3
4 Appellants are entirely unclear as to the Examiner's rationale for asserting that Grier identically
5 discloses the above-identified limitations. The Examiner appears to be separating "references"
6 from "to other ones of said components in said set" despite these limitations being inextricably
7 linked. The Examiner's cited passages within Grier regarding a "reference" does not teach the
8 limitations at issue if the reference is not to other ones of said components in said set. Moreover,
9 the Examiner cited passages within Grier regarding "other ones of said components in said set"
10 does not teach the limitation at issue if these teachings are not associated with the step of
11 inspecting the component for data and method number references.

12
13 The Examiner must establish that Grier identically discloses the limitations, in the
14 manner claimed, and not certain features disassociated from other features within the limitation.
15 Therefore, by parsing the claim language in the manner shown above, the Examiner has failed to
16 establish that Grier identically discloses the claimed limitations.

17
18 Claim 2

19 Claim 2, in part, further recites "further identifying dependencies between target platform
20 resources and said components in said set; and, recording said further identified dependencies in
21 said model." To teach these limitations, the Examiner cited column 8, lines 1-21 and column 20,
22 line 48 through column 21, line 10. Upon reviewing these passages, Appellants are unable to
23 determine exactly what features correspond to the claimed "target platform dependencies" and
24 the dependencies between the target platform dependencies and the components in the set. Thus,

the Examiner's cited passages fails to establish that Grier identically discloses the limitations at issue in claim 2 within the meaning of 35 U.S.C. § 102.

Claim 4

Claim 4, in part, further recites "said further identifying step comprises the step of inspecting each component in said set for data and method member references to said target platform resources." To teach these limitations, the Examiner cited the same passages that the Examiner cited with regard to the identifying step in claim 1. The relevance of these passages to the specific limitations in claim 4, however, is entirely unclear to Appellants. Thus, the Examiner's cited passages fails to establish that Grier identically discloses the limitations at issue in claim 4 within the meaning of 35 U.S.C. § 102.

Claim 5

Claim 5, in part, further recites "said producing step comprises the step of writing said hierarchical structure to a markup language document wherein tags in said markup language document demarcate individual ones of said components and said identified dependencies." To teach these limitations, the Examiner yet again referred to the application manifest. However, as already noted above with regard to claim 1, an application manifest does not correspond to the claimed hierarchical structure. Thus, the Examiner's cited passages fails to establish that Grier identically discloses the limitations at issue in claim 5 within the meaning of 35 U.S.C. § 102.

Claim 6

Claim 6, in part, further recites "the step of performing enumerating, identifying,

organizing, producing and storing step subsequent to installing said application in a target platform." The Examiner's analysis is found in the first portion of page 6 of the Fourth Office Action." However, upon reviewing these passages, Appellants are entirely unclear where these cited passages state the above-identified steps are performed subsequent to installing said application in a target platform. Thus, the Examiner's cited passages fails to establish that Grier identically discloses the limitations at issue in claim 6 within the meaning of 35 U.S.C. § 102.

Claim 7

Claim 7, in part, further recites the "retrieving said model from said repository prior to installing a new component for use in said application." The Examiner's analysis as to this limitations are also found on page 6 of the Fourth Office Action. However, Appellants are entirely unclear where Grier teaches the step (i.e., retrieving the model) occurs prior to installing a new component. Thus, the Examiner's cited passages fails to establish that Grier identically discloses the limitations at issue in claim 7 within the meaning of 35 U.S.C. § 102.

Conclusion

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejection under 35 U.S.C. § 102 based upon the applied prior art is not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. § 102.

Application No.: 10/726,192

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: June 17, 2008

Respectfully submitted,

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CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

1. A hosting environment abstraction method comprising the steps of:
enumerating each of a set of components in an application;
identifying dependencies between each component in said set;
organizing a generic representation of said set of components into a hierarchical structure based upon said identified dependencies;
producing a model encapsulating said hierarchical structure; and,
storing said model in a repository for subsequent retrieval, wherein
said identifying step comprises the step of inspecting each component in said set for data and method member references to other ones of said components in said set, said references indicating a dependency, and
the components are application components, and the application comprises the set of components.
2. The method of claim 1, further comprising the steps of:
further identifying dependencies between target platform resources and said components in said set; and,
recording said further identified dependencies in said model.
4. The method of claim 2, wherein said further identifying step comprises the step of inspecting each component in said set for data and method member references to said target platform resources.

5. The method of claim 1, wherein said producing step comprises the step of writing said hierarchical structure to a markup language document wherein tags in said markup language document demarcate individual ones of said components and said identified dependencies.

6. The method of claim 1, further comprising the step of performing enumerating, identifying, organizing, producing and storing step subsequent to installing said application in a target platform.

7. The method of claim 1, further comprising the step of retrieving said model from said repository prior to installing a new component for use in said application.

11. A machine readable storage having stored thereon a computer program for hosting environment abstraction, the computer program comprising a routine set of instructions which when executed by the machine cause the machine to perform the steps of:

enumerating each of a set of components in an application;
identifying dependencies between each component in said set;
organizing a generic representation of said set of components into a hierarchical structure based upon said identified dependencies;
producing a model encapsulating said hierarchical structure; and,
storing said model in a repository for subsequent retrieval, wherein

said identifying step comprises the step of inspecting each component in said set for data and method member references to other ones of said components in said set., said references indicating a dependency, and

the components are application components, and the application comprises the set of components.

12. The machine readable storage of claim 11, further comprising the steps of:

further identifying dependencies between target platform resources and said components in said set; and,

recording said further identified dependencies in said model.

14. The machine readable storage of claim 12, wherein said further identifying step comprises the step of inspecting each component in said set for data and method member references to said target platform resources.

15. The machine readable storage of claim 11, wherein said producing step comprises the step of writing said hierarchical structure to a markup language document wherein tags in said markup language document demarcate individual ones of said components and said identified dependencies.

16. The machine readable storage of claim 11, further comprising the step of performing enumerating, identifying, organizing, producing and storing step subsequent to installing said application in a target platform.

17. The machine readable storage of claim 11, further comprising the step of retrieving said model from said repository prior to installing a new component for use in said application.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.